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7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
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10 ROBERT L. MARINI, an individual;) Case No: C 06 5491 CW
11 Plaintiff,) ASSIGNED FOR ALL PURPOSES TO:
12 vs.) The Honorable Claudia Wilken
13 SAMUEL CABOT INCORPORATED) Stipulation and Proposed Order to Transfer
14 EMPLOYEES' STOCK OWNERSHIP PLAN,) Action to the District of Massachusetts Where
15 formerly known as SAMUEL CABOT) A Related Action Is Pending Before Judge
16 INCORPORATED EMPLOYEES' STOCK) Morris E. Lasker
17 OWNERSHIP AND SAVINGS PLAN; SAMUEL) Action Filed: Sept. 7, 2006
18 CABOT INCORPORATED, a Massachusetts)
19 corporation, as sponsor and as former)
20 administrator of the Samuel Cabot Incorporated)
21 Employees' Stock Ownership Plan; SAMUEL)
22 CABOT III, individually and as a former trustee of)
23 the Samuel Cabot Incorporated Employees' Stock)
24 Ownership Plan; WILLIAM F. McGONIGLE,)
25 JR., individually and as trustee of the Samuel)
liability partnership)
26
27 Defendants.)
28

STIPULATION

This Stipulation to Transfer Action to the District of Massachusetts is entered into by and between Plaintiff Robert L. Marini ("Plaintiff") and Defendants Samuel Cabot Incorporated Employees' Stock Ownership Plan, Samuel Cabot Incorporated, Samuel Cabot III, William F. McGonigle, Jr., The Valspar Corporation, Christopher Cabot, and Sullivan & Worcester LLP (collectively "Defendants"), with reference to the following facts:

A. On August 16, 2006, a case was filed in the District of Massachusetts entitled, Samuel Cabot Incorporated, Samuel Cabot III, individually and as former trustee of the Samuel Cabot Incorporated Employees' Stock Ownership Plan, William F. McGonigle, Jr., individually and as trustee of the Samuel Cabot Incorporated Employees' Stock Ownership Plan and The Valspar Corporation v. Robert L. Marini, Civil Action No. 06 CA 11448-MEL (the "Massachusetts Action").

B. On September 7, 2006, Robert L. Marini filed this action.

C. On September 27, 2006, Defendants filed a Motion to Dismiss, or In the Alternative, To Change Venue based, in part, upon the fact that a related action between these parties had previously been filed in the District of Massachusetts, namely, the Massachusetts Action.

D. On November 1, 2006, this Court issued a Order Denying Without Prejudice Defendants' Motion to Dismiss or Transfer. The Court held in pertinent part:

Therefore, the Court defers to the Massachusetts district court to decide the appropriate forum. Because Marini has already filed a motion to transfer the Massachusetts action, this Court DENIES without prejudice Defendants' motion (Docket No. 4), pending the Massachusetts district court's ruling on Marini's motion to transfer.

The parties are instructed to notify the Court promptly upon entry of an order in the pending action in the Massachusetts district court. If the Massachusetts district court grants Marini's motion to transfer the first-filed action, the actions will be related and consolidated and Defendants may renote their motion to dismiss if there remains grounds to do so. If the Massachusetts district court denies Marini's motion to transfer, Defendants may renote their motion to dismiss and the Court will either dismiss this action, stay it, or transfer it to the Massachusetts district court.

E. On January 10, 2007, the Honorable Morris E. Lasker, Judge of the United States District Court for the District of Massachusetts, issued an Order in the Massachusetts Action denying the Motion

1 of Robert Marini to Dismiss or Transfer that Action to the Northern District of California. A copy of
2 that Order was filed with this Court on January 24, 2007 as an attachment to the parties' Notice Of
3 Ruling On Motion To Transfer Related Action From District Of Massachusetts.

4 D. On January 29, 2007, Marini filed an answer and counter-claim in the Massachusetts
5 Action.

6 IT IS HEREBY STIPULATED AS FOLLOWS:

7 Pursuant to 28 U.S.C. §1404(a), in the interests of justice and for the convenience of the parties
8 and witnesses, this action should be transferred to Judge Morris E. Lasker of the United States District
9 Court for the District of Massachusetts where a related action is pending between these parties.

10 Dated: February 8, 2007

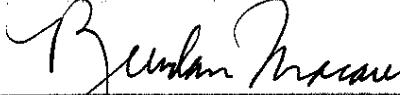
BRISCOE IVESTER & BAZEL LLP

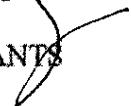
11 By: 

12 Lawrence S. Bazel, Esq.
13 Attorneys for Plaintiff Robert L. Marini

14 Dated: February 8, 2007

NOSSAMAN GUTHNER KNOX ELLIOTT, LLP

15 By: 

16 Brendan F. Macaulay, Esq.
17 ATTORNEYS FOR DEFENDANTS 

19 **ORDER**

20 Upon consideration of the Stipulation, and good cause appearing therefor:

21 IT IS HEREBY ORDERED THAT:

22 Pursuant to 28 U.S.C. §1404(a), in the interests of justice and for the convenience of the parties
23 and witnesses, this action is hereby transferred to Judge Morris E. Lasker of the United States District
24 Court for the District of Massachusetts where a related action is pending between these parties.

25 Dated: 2/9/07



26 THE HONORABLE CLAUDIA WILKENS
27 United States District Court
28 NORTHERN DISTRICT OF CALIFORNIA